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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,213	02/24/2004	Willy Poppe	POPP3001/JEK	8412

23364 7590 08/21/2006

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EXAMINER
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SCHATZ, CHRISTOPHER

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 08/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/784,213

Applicant(s)

POPPE, WILLY

Examiner

Christopher T. Schatz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, and 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poppe (U.S. Patent 4,194,255) in view of Contreras (U.S. Patent 5,797,154), Giori et al. (U.S. Patent 6,684,433), Kuczynski et al. (U.S. Patent 5,989,699), and Shalon et al. (U.S. Patent 6,309,891) for same reasons as set forth in section 2 of the office action dated March 8, 2006.

### ***Response to Arguments***

Applicant's arguments filed June 8, 2006 have been fully considered but they are not persuasive. Applicant states that Contreras in combination with Poppe does not teach that it would have been obvious to one of ordinary skill in the art to cut the strip of Poppe from a larger slab of material because the finished product of Contreras is a single pillow regardless of the method of how said pillow is produced. Examiner asserts that the finished product of applicant method is also a single resilient body. Applicant should note that the purpose of Contreras is to show that when forming a resilient body, it is known in the art to either cut said body from a larger slab or to simply prepare the body from to the correct dimensional initially. Although Contreras is directed to a pillow rather than a foam spring, the disclosure of Contreras that the

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resilient pillow body can either be manufactured to correct proportions or can be cut from a larger block of material would suggest to one of ordinary skill in the art of manufacturing resilient bodies that cutting a resilient body from a larger slab of material or forming a resilient body to exact specifications are alternate equivalent manufacturing methods. Unless applicant can demonstrate that cutting the body from a larger slab of material rather than forming the material to exact specifications has *unexpected results specific to the formation of a foam spring*, examiner will maintain the position that one of ordinary skill in the art would have understood that cutting a strip of foam from a larger slab or forming the strip to its exact dimensions are alternative equivalents. Applicant's statement that the claimed method enables the production of multiple tubular resilient bodies is not commensurate with the scope of applicant's claim since the claim only requires the production of one resilient body.

As to Giori, examiner agrees that Giori discusses some the disadvantages of using viscoelastic foam. However, the reference also discloses that using viscoelastic foam is well known in the art and its use has certain advantages such as improved comfort and support. The disclosure of certain disadvantages by Giori does not make the use of viscoelastic foam unobvious, since one of ordinary skill in the art in possession of Giori would also recognize the advantages of using viscoelastic foam.

As to Kuczynski, applicant states that the reference is not specific to viscoelastic foam, and that there is no disclosure in Kuczynski that the method of opening cells is useful in viscoelastic foam. Examiner acknowledges that Kuczynski is not specific to viscoelastic foam. Applicant should note that Kuczynski is used by the examiner to show that compressing foam is a well-known method of opening cells. Examiner further asserts that one of ordinary skill in the

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art would have been motivated to open the cells Poppe because, according Shalon et al., an open cell structure is advantageous for elastic springs. Applicant states that Shalon et al. is not analogous art. Applicant should note that it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Shalon et al. is in the applicant's field of endeavor because the reference is specific to elastic tubular foam springs. Applicant states that the reference is non-analogous because Shalon et al. is specific to capillary printing systems and not related to resilient bodies that can used in mattresses and cushions. Applicant should note that the method, *as currently claimed*, is not specific to mattresses and cushioning because the claim *does not require* that the resilient body be used in a mattress or cushion.

Applicant states that Contreras teaches away from an open celled foam structure because an open celled structure would reduce the ability of Contreras' foam to retain heat. Examiner first asserts that Contreras never makes such a statement, since the reference is completely silent as to whether the foam is open-celled or closed-cell. Applicant's statement is merely an unsupported assertion that would require scientific data because there is no way to know exactly how an open-celled structure would affect the heat-retaining ability of the specific viscoelastic foam disclosed by Contreras.

Applicant is advised that one cannot show nonobviousness by attacking references individually and in a vacuum of each other as a rejection under 35 U.S.C. 103 is a consideration

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relating to the combined teachings of the references (and not each reference in a vacuum of the others).

### *Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

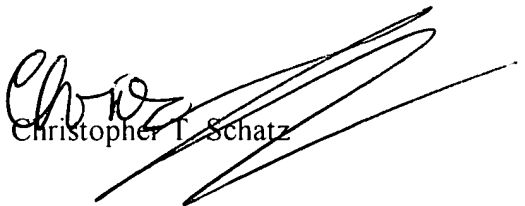
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher T. Schatz whose telephone number is 571-272-1456. The examiner can normally be reached on 8:00-5:30, Monday -Friday.

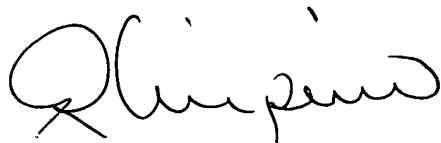
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Christopher T. Schatz



RICHARD CRISPINO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700